

**REMARKS**

As an initial matter, Applicants gratefully acknowledge withdrawal of rejections under 35 USC 112, second paragraph as provided on pg. 2 of the instant Office Action.

Independent claims 1, 5, 236 and 237 have been amended to recite a particular probe embodiment in which the recognition element or probe ligand is more specifically defined using language from claim 9 (adapted to exclude nucleic acids). As amended, neither the recognition element nor probe ligand includes nucleic acid. Accordingly, Claim 9 has been cancelled.

Support for the amendments can be found throughout the specification including the Drawings and claims as filed originally. Particular support can be found in the language of claim 9 (now canceled).

No new matter has been added by virtue of the addition of the claim amendments. No new issue is believed to be raised by the amendments to the claims as the subject matter of the amended language was already considered and examined by the Examiner. Accordingly, entry of the amendments to the claims is respectfully requested.

**Claim Rejection under 35 USC §102**

Claims 1, 4-5, 7-9, 58, 60, 90-91, 228, 231-232, 234-237 stand rejected as being anticipated by Lannigan et al. (USP 6,399,302). While Applicants respectfully disagree with the stated reasons for making the rejection, bases for it has been addressed by the present submission.

As cited, Lannigan discloses a sequence with formula F1-X-A-L-B-Y-F2 in which A and B are aptamers. Aptamers of Lannigan '302 are nucleic acids. In contrast, probes of Applicants' claims 1, 5, 236 and 237 include recognition elements or probe ligands that are not nucleic acids. As such, the cited compound and the invention of Applicants' claims are different. Accordingly, Lannigan '302 fails to anticipate the presently claimed invention.

**Claim Rejections under 35 USC §103**

In the interest of brevity, each of the rejections under this section are addressed together below.

Claims 2-3, 106-108, 117, 131-135, 157-159 stand rejected as being unpatentable over Lannigan (US Pat. 6,399,302) in view of Jayasena et al. (US Pat. Application No. 2001/0055773).

Claims 6, 59, 61 and 229 stand rejected as being unpatentable over Lannigan (US Pat. 6,399,302) in view of Tyagi et al et al. (US Pat. No. 5,925,517).

Claims 82-89 stand rejected as being unpatentable over Lannigan (US Pat. 6,399,302) in view of Kolesar et al et al. (US Pat. No. 6,261,781).

Applicants respectfully disagree with each basis of rejection as stated above particularly in view of the present submission.

The Office has relied on Lannigan as the primary reference on which to base each of the above-mentioned claim rejections under 103. The deficiencies of Lannigan as relied on have already been discussed above. As cited, Lannigan's sequence has the structure F1-X-A-L-B-Y-F2 in which A and B are aptamers. Aptamers are understood to be nucleic acids in the context of the cited reference. However, independent claims 1, 5, 236 and 237 have been amended to exclude embodiments in which the recognition element or the probe ligand of the claimed probe is a nucleic acid. There is no suggestion or teaching in Lannigan as cited to make and/or use the presently claimed probes.

There is no suggestion or teaching in any of Jayasena, Tyagi, or Kolesar as cited by the Office (taken individually or together) that remedies these defects. Accordingly, the presently claimed invention is patentable over the cited references.

### **Conclusion**

It is believed that the application is now in condition for allowance. Applicants request the Examiner to issue a notice of Allowance in due course. The Examiner is encouraged to contact the undersigned to further the prosecution of the present invention.

The Commissioner is authorized to charge JHK Law's Deposit Account No. **502486** for any fees required under 37 CFR §§ 1.16 and 1.17 and to credit any overpayment to said Deposit Account No. **502486**.

Respectfully submitted,

**JHK Law**

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